

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

75-7201

WT

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 75-7201

B

HOTAFT MANAGEMENT CORPORATION,

Plaintiff-Appellant

-against-

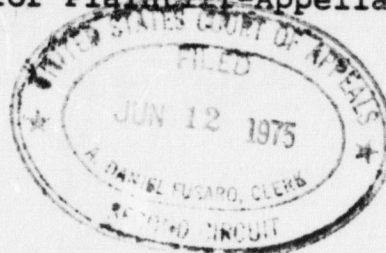
AMERICAN TELEPHONE & TELEGRAPH
CO. and THE NEW YORK TELEPHONE
COMPANY,

Defendants-Appellees.

APPEAL OF AN ORDER OF THE DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK DISMISSING PLAINTIFF'S
CAUSE OF ACTION

PLAINTIFF-APPELLANT'S APPENDIX

S. ROBERT LEE
17 West 68th Street
New York, New York 10023
Attorney for Plaintiff-Appellant



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RELEVANT DOCKET ENTRIES

February 19, 1975 - Filed complaint and Issued Summons.

February 21, 1975 - Filed order that defendants are restrained from interfering with or terminating the telephone service of plf. pending a hearing for a temporary injunction pending the trial of this action. Pltf's undertaking \$20,000., payable to the order of the Clerk of the Court. A HEARING ON TEMPORARY INJUNCTION will be held on 2-21-75. Carter, J. endorsed on above order: Memo of deposit in the registry of the Court - check payable to Clerk in the sum of \$20,000.

February 28, 1975 - Filed def't's affdvt. in opposition to pltf's motion for prel. inj.

February 28, 1975 - Filed def't's memorandum in opposition to pltf's motion for prel. inj.

March 3, 1975 - Filed plaintiff's brief re prel. inj.

March 7, 1975 - Filed Opinion #42009...a motion for prel. inj. was heard on 2-21-75. A temp. restraining order was entered and plaintiff was required to post \$20,000. bond or deposit cash in that sum. The motion is denied. The action is otherwise dismissed since no federal questions are raised. So ordered. Carter, J. m/n

March 18, 1975 - Filed pltf's notice of appeal to the USCA for the 2nd Circuit from order of Judge Carter, dated 3/5/75, copy mailed to George E. Ashley, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HOTAFT MANAGEMENT CORPORATION,

Plaintiff

against

AMERICAN TELEPHONE & TELEGRAPH CO., &
THE NEW YORK TELEPHONE COMPANY,

Defendants

PLAINTIFF, complaining of the Defendants shows and alleges:

1. HOTAFT MANAGEMENT CORPORATION was, at all the times hereinafter mentioned a Corporation duly organized under the laws of the State of New York.
 2. Upon information and belief, the Defendants, AMERICAN TELEPHONE AND TELEGRAPH CO., THE NEW YORK TELEPHONE CO., are corporations organized under the laws of the State of New York and duly authorized to conduct business in the State of New York.
 3. The Defendants, AMERICAN TELEPHONE & TELEGRAPH CO. is, on information and belief, the parent company of the Defendant, THE NEW YORK TELEPHONE CO.
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4. The Defendants, THE NEW YORK TELEPHONE CO. is primarily engaged in the business of supplying telephone equipment and telephone services in the State of New York and in other states of the United States and foreign countries.

5. The Defendants, among other things, provides services in the Interstate Commerce by means of telephone wire and other electronic means from the State of New York to other states and to foreign countries.

6. That the Defendants are subject to the provisions of the Communications Act of 1934 and to the laws and statutes promulgated by the Congress of the United States and by various United States governmental agencies and administrative bodies.

7. That this Court is vested with jurisdiction over the instant litigation under the Statutes and Laws of the United States and applicable administrative rules and regulations and under the provisions of the Constitution of the United States and the Interstate Commerce clause of the United States Constitution.

8. The Plaintiff and the Defendants have utilized, on frequent occasions, the facilities of the United States Mails in that, among other things the Defendant has mailed to the Plaintiff various letters, notices

and bills utilizing the United States Mails.

9. That the Defendant is the only company providing telephonic services and that the Plaintiff cannot obtain such telephonic services from any other firm or entity.

10. That the Defendants have a monopoly over the wires and long distance and local telephonic facilities.

11. That the Defendants are required by various statutes and Acts of Congress and by the governmental administrative agencies to provide telephonic services at the rates and conditions mandated by such statutes, Acts of Congress and Governmental and Administrative bodies.

12. That the Defendants have rendered to the Plaintiff its bills for telephonic services rendered and the cost of the telephonic equipment which said bills have been promptly paid by the Plaintiff at all times.

13. That the Plaintiff is current in the payment of its telephone bills and is not indebted to the Defendants for any monies.

14. That the Defendants have made a written demand for a Security Deposit in the sum of \$30,000 from the Plaintiff.

15. That thereafter the Defendant has unilaterally abrogated its agreement and without justification demanded a Security Deposit of \$56,000 instead of \$30,000 agreed to by the Plaintiff.

AS AND FOR THE FIRST CAUSE OF ACTION

16. Plaintiff realleges and reiterates each and every allegation of this Complaint numbered one through fifteen, both inclusive, with the same force and effect as if hereinafter alleged in full.

17. That the Defendant has breached its written agreement for the Security Deposit in the sum of \$30,000.

18. That the Plaintiff has at all times been willing and able to deposit Security with the Defendant as previously agreed in the said sum of \$30,000.

19. That the Defendant has threatened to discontinue the telephone services for the Plaintiff by reason of a claim that the Security as requested had not been deposited, which said Security demanded by the Plaintiff was in the sum of \$56,000 and in breach of its Agreement.

20. That the Plaintiff has heretofore deposited the sum of \$20,000 on account of the said Security Deposit and is ready, willing and able to deposit the additional \$10,000 required by the agreement between

the Plaintiff and Defendants.

21. That the Defendants have and are refusing to accept the additional \$10,000 deposit and in lieu thereof have demanded and now demand that the additional sum of \$36,000 be deposited with the Defendant.

22. The Defendants have threatened, in writing, to discontinue incoming telephone calls to the Plaintiff unless the said sum of \$36,000 is deposited.

23. That Plaintiff's business is the operation of a hotel and discontinuance of incoming telephone calls will greatly prejudice and effect the business of the Plaintiff and will cause Plaintiff great damage and loss.

24. That unless the Defendants are enjoined from the threatened discontinuance of telephone service irreparable harm will be caused to the Plaintiff.

25. That Plaintiff does not have an adequate remedy at law.

26. That in order to avoid irreparable damage to the Plaintiff the Plaintiff demands that Defendants be enjoined from any interference with the telephone service of the Plaintiff.

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AS AND FOR THE SECOND CAUSE OF ACTION

27. Plaintiff repeats, reiterates and realleges each and every allegation of this complaint numbered 1 through 26, both inclusive, with the same force and effect as if hereinafter realleged in full.

28. On information and belief that the Defendant THE NEW YORK TELEPHONE COMPANY is a wholly owned subsidiary of the Defendant AMERICAN TELEPHONE AND TELEGRAPH CO.

29. That the Defendant THE NEW YORK TELEPHONE CO. is subject to the complete control and authority of the Defendant AMERICAN TELEPHONE & TELEGRAPH CO.

30. On information and belief that all of the acts of THE NEW YORK TELEPHONE CO. are the acts of the Defendant AMERICAN TELEPHONE & TELEGRAPH CO.

31. That all long distance lines and all long distance calls of the Plaintiff are made through the use of the properties of the Defendant AMERICAN TELEPHONE & TELEGRAPH CO.

32. That irreparable damage will be caused to the Plaintiff if the Defendant AMERICAN TELEPHONE & TELEGRAPH CO. were to be permitted to discontinue Plaintiff's telephone service.

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33. That by reason thereof the Plaintiff demands that the Defendant AMERICAN TELEPHONE & TELEGRAPH CO. be enjoined from terminating or interfering with the long distance telephone service of the Plaintiff.

34. That Plaintiff does not have an adequate remedy at law.

AS AND FOR A THIRD CAUSE OF ACTION

35. Plaintiff repeats, reiterates and realleges each and every allegation of this complaint numbered 1. through 34., both inclusive, with the same force and effect as if hereinafter alleged in full.

36. That the Defendants herein are the sole single source for the local and long distance telephonic service and that the Plaintiff does not have the ability to obtain another source for the said telephonic services.

37. That the business of the Plaintiff is greatly dependent on the availability of said telephonic service, both for the purpose of its paying guests, as well as in connection with maintaining communications in the world of trade and commerce, among other, for the purpose of obtaining reservations and making sales on a national basis.

38. That for the purpose of coercing the Plaintiff herein to make a deposit the Defendants have threatened to discontinue the incoming telephone calls to Plaintiffs business.

39. That Defendants are using the monopolistic grip which they possess over local and interstate communications to unlawfully coerce, damage and injure the Plaintiff herein and that such acts of the Defendant are wilful and deliberate and solely intended to damage the business of the Plaintiff.

40. That the termination of incoming telephone calls is a procedure not permitted by the Communications Act of 1934 or by any of the laws or statutes pertaining to the Defendants.

41. That the termination of incoming telephone calls are not justified since the Plaintiff is not liable for the cost of such incoming calls nor is the Plaintiff charged with such calls.

42. That the Defendants in terminating Plaintiffs incoming telephone calls interfered with the conduct of Interstate Commerce.

43. That Defendants termination of incoming calls is an act of the Defendants in violation of the Acts of Congress and various laws commonly designated as "Anti-Trust" laws.

44. That by reason of the foregoing the Plaintiff has been greatly damaged and will continue to be damaged, all to Plaintiffs damages in the sum of \$10,000.000.

45. That Plaintiff respectfully demands treble damages under the provisions of said "Anti-Trust" laws for total damages in the sum of \$30,000.000.

46. That the acts of the Defendants are wilful and malicious entitling Plaintiff to punitive damages.

47. That Plaintiff respectfully demands punitive damages in the sum of \$10,000.000.

AS AND FOR THE FOURTH CAUSE OF ACTION

48. Plaintiff repeats, reiterates and realleges each and every allegation of this complaint #1 through #47, both inclusive, with the same force and effect and if hereinafter alleged in full.

49. That the Defendants herein have maintained the said telephone system and service within Plaintiff's premises, which are known as the Hotel Taft, for a period in excess of 10 years.

50. That the Defendants have received substantial revenue from the Plaintiffs through the use of the telephone system and service.

51. That the Defendants did not demand and did not have a security deposit prior to the said demand which the Defendants have made upon the Plaintiff.

52. That the Defendants demand at this time is not based on any legitimate business purpose.

53. That the Defendants demand for a security deposit as against this Plaintiff was discriminatory and in violation of the Acts of Congress, Laws and Statutes and the Communication Act of 1934.

54. That by reason thereof and by reason of the said discriminatory practice Defendants herein have violated the aforesaid Acts of Congress and Laws of Statutes.

55. By reason of the said violations the Plaintiff has been seriously and greatly damaged.

56. That the damages to the Plaintiff by reason thereof amounts to the sum of \$500,000.

57. The Defendants are liable to the Plaintiff for treble damages and punitive damages by reason thereof.

58. That the Plaintiff therefor demands damages in the sum of \$1,500,000. together with punitive damages in the amount of \$10,000,000.

AS AND FOR THE FIFTH CAUSE OF ACTION

59. Plaintiff repeats, reiterates and realleges each and every allegation of this complaint #1 through #58, with the same force and effect and if hereinafter alleged in full.

60. That the Defendants herein knowing of their exclusive right to provide telephonic services and by reason of their monopoly in the aforesaid area of telephonic services is in a position to unlawfully exert pressure and coerce the Plaintiff herein.

61. That the Defendants, on information and belief, utilized the device of "Security Deposit" as a substitute for rising monies and working capital from the persons that utilize Defendants telephonic services as a substitute for the rising of working capital as is done by other organizations.

62. That the Defendants, on information and belief, commingled such "Security Deposit" with their general funds and utilized such funds for general corporate purposes.

63. That by reason thereof the Defendants are depriving the Plaintiff of property without the due process of law and for the sole, single and unlawful benefit of the Defendants herein.

64. That by reason thereof the Defendants violate the provisions of the U.S. Constitution, Acts of Congress, and Laws and Statutes of the United States all to the detriment of the Plaintiff herein.

65. That by reason the Plaintiff has been greatly damaged in the sum of \$500,000.

66. That Plaintiff respectfully demands that it be awarded treble damages for the said violations by the Defendants herein.

67. That by reason thereof Plaintiff demands \$1,500.000 damages together with punitive damages of \$10,000.000.

WHEREFORE, Plaintiff demands judgement against the Defendant as follows:

1. That the Defendant be temporarily and permanently enjoined from affecting or terminating the telephonic services of the Plaintiff herein.

2. That the Plaintiff be awarded damages as against the Defendant as follows:

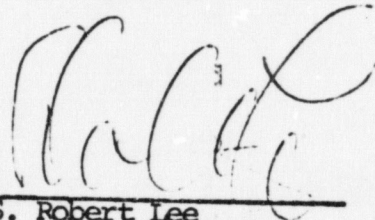
a) On the third cause of action in the sum of \$30,000,000

for damages and \$10,000,000 for punitive damages.

b) On the fourth cause of action in the sums of \$1,500,000 for damages and \$10,000,000 for punitive damages.

c) On the fifth cause of action in the sums of \$1,500,000 for damages and \$10,000,000 for punitive damages.

3. That the Plaintiff be awarded costs and reasonable Attorney's fees incurred in the prosecution of this action.



S. Robert Lee
Attorney for the Plaintiff
17 W. 68th Street
New York, N.Y. 10023.

DATE: February 19, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
Hotaft Management Corporation

V

**American Telephone & Telegraph Co.
The New York Telephone Company**
-----X

75 Civ. 0812 (RLC)

Docket number

NOTICE OF
REASSIGNMENT

Pursuant to the memorandum of the Coordinating Clerk
the above entitled action is reassigned to the calendar of

JUDGE **Robert L. Carter** -----

All future documents submitted in this action are to
be presented in the Clerk's Office for filing and shall have the
assigned judge's initials after the docket number.

Dated: **February 21, 1975**

Raymond F. Burghardt, Clerk

By: *Rosemarie Brucato*

Deputy Clerk

Attorneys of Record

cc: **Robert Lee
17 West 68th Street
New York, New York 10023**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HOTAFT MANAGEMENT CORPORATION,

Plaintiff

against

AMERICAN TELEPHONE & TELEGRAPH CO., &
THE NEW YORK TELEPHONE COMPANY,

Defendant(s)

JUDGE GRIESA

75 CIV 812

Upon the affidavit of S. Robert Lee verified the 15th day of February, 1975, and upon a copy of Plaintiff's proposed complaint, and upon an undertaking to be made by the Plaintiff pursuant to this order, it is now:

Ordered that the Defendants are restrained from interfering with or terminating the telephone service of the Plaintiff herein pending a hearing for a temporary injunction pending the trial of this action and it is:

Further ordered that the Plaintiff will file with the Clerk of this Court an undertaking in the amount of \$_____ by delivering to the Clerk of this Court a certified check, payable to the order of the

Clerk of the Court, or in the alternative a Surety Company bond in the said amount and it is:

Further ordered that a hearing of Plaintiff's petition for a temporary injunction will be held at the United States District Court at 40 Center St., Borough of Manhattan, City and State of New York, before the Honorable _____, Judge, in Room _____ on the _____ day of _____, 1975, and it is:

Further ordered that service of a copy of this order upon the Defendants New York Telephone Company, at 10 Columbus Circle, New York, N. Y., and upon the American Telephone and Telegraph Company at 195 Broadway, New York, N.Y. , on or before _____ day of February, 1975, together with the annexed affidavits and exhibits shall be sufficient.

SIGNATURE: _____
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HOTAFT MANAGEMENT CORPORATION,

Plaintiff

against

AMERICAN TELEPHONE & TELEGRAPH CO., &
THE NEW YORK TELEPHONE COMPANY,

Defendant(s).

S. Robert Lee being duly sworn advises and says:

I am the President of the Hotaft Mgt. Corp., the Plaintiff in this action and I am submitting this affidavit in support of Plaintiff's application for a restraining order pending a hearing for a temporary injunction against the Defendants.

The Plaintiff operates a hotel in the City of New York under the trade name "Hotel Taft" which said hotel employs approximately 300 persons and supplies the travelling public which originates in the various States of the United States and Foreign Countries with 1532 rooms plus other public facilities.

The Plaintiff's telephone system consists of approximately 2000 instruments and is predominantly used by such hotel guests and

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travelling public for the purpose of making personal telephone communications within the State of New York, the other States of the United States and with Foreign Countries. The Telephone Company has in the past rendered telephone bills which average approximately \$22,000.00 per month of which said amount approximately \$11,000.00 represents the rental charge for the Telephone Company equipment, and the balance of the approximately \$11,000.00 represents charges by the Telephone Company for the use of the telephone services and the making of telephone calls. Of the said approximate \$11,000.00 which amount represents the use of the telephone service, an amount in excess of 90% represents use of telephones to other States of the United States and to Foreign Countries and represents Interstate communication and Commerce.

Among other things the jurisdiction of this Court is vested by virtue of the fact that an act of Congress known as the Communications Act of 1934 is applicable to the conduct of the Defendant Telephone Company business in Interstate Commerce and by virtue of the fact that the United States Constitution vests exclusive jurisdiction over matters of Interstate Commerce in the Federal Courts.

The Defendant's have entered into a written agreement with the Plaintiff requiring the Plaintiff to make a deposit of \$30,000.00 as a security deposit to assure the Defendants of the payment of its proper bills.

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All bills of the Telephone Company are current and have always been properly paid.

The Defendants unilaterally breeched the said agreement and made a demand for a deposit of \$56,000.00 without cause or justification. The deponent has been advised that the Telephone Company may under certain circumstances require a deposit representing an average of two months billing as its security deposit. Such circumstances are ones in which the Telephone Company, with good reason, questions the credit or the capacity of the telephone subscriber to meet their applications. Assuming, but certainly not conceding, that such two months security entitlement is applicable to the instant situation the Telephone Company might be entitled to a maximum deposit of \$30,000.00 computed as follows:

One month of prepaid equipment charges.

Two months of average service charges.

The equipment charges are paid one month in advance in any event thus the Telephone Company is already holding approximately \$11,000.00 of prepaid advance charges for the equipment which charge has in fact been paid and delivered to the Telephone Company. In addition prior to the Telephone Company's unilateral breach of its written agreement, the Plaintiff had deposited \$20,000.00 with the Telephone Company which the said Company still holds thus, the Telephone Company is presently holding approximately \$31,000.00 in security deposits which said sum is more than adequate for their security purposes and is an amount as may be required under the tariff.

As appears upon the next exhibit, the Telephone Company has threatened and, I truly believe intends, to terminate the telephone service on incoming calls to the Plaintiffs hotel. It is obvious that such move on the part of the Telephone Company is malicious and designed solely for the purpose of irreparable damage to Plaintiffs business. It is perfectly clear that incoming telephone calls do not constitute a charge which can be billed by the Telephone Company to the Plaintiff but is singly and solely designed to prevent potential hotel guests from making incoming calls for purposes of room reservations.

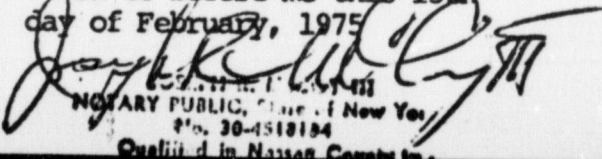
The Plaintiff is willing to deposit such an undertaking as may be ordered by this Court for the purpose of obtaining this restraining order and I respectfully suggest to the Court that since it is only incoming calls which are intended to be cut off this restraining order constitutes no injury or potential injury to the Telephone Company and the amount of the undertaking should be, I respectfully submit, absolutely minimal.

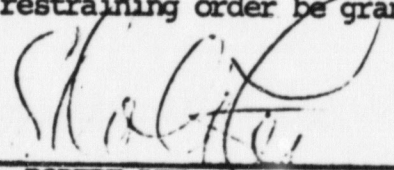
A copy of the proposed complaint in this action is hereto attached.

No previous application for this order was made to any Court of competent jurisdiction.

Wherefor I respectfully pray for the restraining order be granted in all respects.

Sworn to before me this 15th
day of February, 1975


NOTARY PUBLIC, State of New York
No. 30-4518184
Qualified in Nassau County


S. ROBERT LEE



New York Telephone

10 Columbus Circle
New York, N. Y. 10019
Phone (212) 399-2579

Mr. P. G. O'HARE, Jr.
Manager

February 7, 1975

Mr. S. Robert Lee
President
Hotaft Management Corporation
777 Seventh Avenue
New York, N.Y. 10019

Dear Sir:

Please be advised that your incoming service on 247-4000 will be interrupted on Friday, February 14th, if an additional deposit of \$26,000.00 is not paid. This will be in accordance with the recent PSC determination.

If you have any questions, please call me on 399-2519.

Yours truly,

P. G. O'Hare, Jr.
P. G. O'HARE, JR.
Manager

PGO:bs

*Rec'd Monday
2/10/75*

F.C.C. b...

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
HOTAFT MANAGEMENT CORPORATION,

Plaintiff,

75 Civ. 812 R.L.C.

- against -

AFFIDAVIT

AMERICAN TELEPHONE & TELEGRAPH CO.,
& THE NEW YORK TELEPHONE COMPANY,

Defendants.

-----X
STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

Peter G. O'Hare, Jr., being duly sworn deposes and
says:

1. I am a Business Office Manager - Customer Services
for the defendant New York Telephone Company ("Telephone Company").
I make this affidavit in opposition to plaintiff's motion for a
preliminary injunction. I am familiar with all aspects of the
Telephone Company's procedures for requesting deposits and with
the applicable tariff. I am also familiar with the recent
dealings the Telephone Company has had with the plaintiff. This
affidavit is based on my own personal knowledge and on the
records of the Telephone Company.

Statement of Facts

2. Sometime during the month of September, 1974, the

CUSTOMER SERVICE - BUSINESS CENTER

Telephone Company was informed by the plaintiff that there had been a change of ownership at the Hotel Taft and that plaintiff, as the new owner, was requesting telephone service. In accordance with established procedure, the Telephone Company then requested credit information from the plaintiff, including details of plaintiff's hotel experience, if any. When the plaintiff failed to supply this information, defendant contacted Mr. Robert Lee (who was alleged to be the President and sole share holder of the plaintiff) and requested a deposit equivalent to two months' estimated charges, which, based upon the Hotel Taft's prior telephone experience, came to \$56,000.00.

3. At the time this demand was made, the prior management of the Hotel Taft owed, and still owes, the defendant over \$18,000.00 for telephone service and usage. Mr. Lee protested the deposit demand arguing that the plaintiff had no financial connection with the old ownership or its past indebtedness. At Mr. Lee's insistence, a compromise was finally worked out whereby the plaintiff agreed to deposit \$30,000.00 in three (3) monthly installments in lieu of the requested deposit of \$56,000.00, on the specific understanding that the plaintiff would pay its bill within five (5) days of receipt. This understanding was confirmed

by defendant's letter dated September 12, 1974, a copy of which is annexed hereto as Exhibit "A". The letter indicated that if the deposit or bill payments were not made on the dates agreed upon, plaintiff's outgoing service would be interrupted and its incoming service terminated five (5) days later.

4. Defendant's records reveal that to date plaintiff has only deposited \$20,000.00 with the defendant relative to its agreement.

5. At the time this understanding was arrived at, defendant still had no credit information regarding the plaintiff and, indeed, no credit information would seem to have been available, since plaintiff had then, admittedly, only been incorporated for a very short period of time. Parenthetically, as of December 6, 1974, defendant was still unable to locate any record of plaintiff's alleged incorporation on file with the New York State Department of State - Division of Corporations.

6. Thereafter on October 11, 1974, the New York Times published an article in its Real Estate Section, a copy of which is annexed hereto and marked Exhibit "B", which indicated that Mr. Lee was a lawyer who had no previous experience in the hotel industry and that he had apparently acquired the hotel from a company controlled by one, Gilbert Federbush, who,

unfortunately, had himself been involved in two prior hotel failures. The article further revealed that the Hotel Taft was running a deficit of approximately \$80,000.00 monthly and that its occupancy rate had dropped below 50% during the previous summer. Mr. Lee was reported as commenting that he felt himself "lucky" that the occupancy rate had risen to 54%, although he stated that the "break even point" was between 56% and 58% occupancy...

7.. During this same period, defendant received an unsolicited telephone call from the Miami office of the Telephone Company in the State of Florida requesting credit information on the Hotel Taft. Defendant was informed that Mr. Federbush was at that time negotiating the purchase of the Carriage Hotel in Miami, the Telephone Company was considering the desirability of a deposit, and Mr. Federbush had represented to the Telephone Company in Miami that he was the owner of the Hotel Taft in New York City.

8. Based on these facts,¹ Mr. Lee was again contacted

1. An analysis of the several factors influencing the Telephone Company's decision is contained in a memorandum dated December 26, 1974 of Mr. W. E. Braunlich, Division Manager, a copy of which is annexed hereto and marked Exhibit "C".

by defendant and requested to pay the full \$56,000.00, based upon two months estimated telephone charges. Mr. Lee again protested and requested a meeting with the Public Service Commission. Defendant concurred in that request and a hearing was held on November 7, 1974. A resume of what transpired at that meeting, prepared by the defendant, is annexed hereto and marked Exhibit "D". The Public Service Commission agreed with the defendant that under the circumstances a \$56,000.00 deposit was appropriate. In its letter dated November 27, 1974, a copy of which is annexed hereto and marked Exhibit "E", the Commission stated:

"The Telephone Company's Tariff, as well as the Public Service Law, allows the Company to request a deposit equal to two months average billing. Since Hotaft is a new corporation and there is no previous credit history, a deposit of \$56,000.00 corresponding to the most recent two months average billing is considered appropriate."

9. Plaintiff disagreed with this determination and demanded a formal hearing before the Commission. This request was denied. Thereafter in accordance with the Public Service Commission determination, your affiant wrote a letter to Mr. Lee, dated February 7, 1975, requesting an additional \$26,000.00

deposit² and advising him that if such sum were not forthcoming, plaintiff's telephone service would be interrupted. A copy of said letter is hereto annexed and marked Exhibit "F". Shortly thereafter, plaintiff commenced the within action.

The Deposit Tariff Challenged by Plaintiff

10. The specific tariff which has been challenged by plaintiff permits the Telephone Company to require a subscriber to post a deposit equivalent to two months' estimated charges if he cannot otherwise establish his credit to the satisfaction of the Telephone Company. A copy of said tariff is annexed and marked Exhibit "G". The deposit tariff has been in effect, with minor modifications, since 1923. After Section 120 of the Public Service Law was enacted in 1970, the Public Service Commission promulgated by resolution a complete set of regulations governing all aspects of deposit tariffs. Pub. Serv. Comm'n Case No. 25695 (1970). The current deposit tariff and the Telephone Company's practices fully comply with the regulations of the Commission.

2. The figure quoted in the letter is in error, since at the time of my writing, I was not aware that plaintiff had only paid \$20,000.00 of the \$30,000.00 originally agreed upon. The correct figure is, therefore, \$36,000.00.

Need for the Deposit Tariff

11. The policy of the Telephone Company is to request a deposit only when necessary to protect earned revenues and when a subscriber cannot otherwise establish his credit to the satisfaction of the Telephone Company. The Telephone Company does not favor deposits and dispenses with them whenever possible. The Telephone Company is required to pay interest at a rate of 8% per annum on deposits and the expenses of administration of deposits are large.

12. Operating experience has shown, however, that the deposit tariff is the only feasible way for the Telephone Company to limit uncollectible debt to reasonable proportions. The telephone business differs from private enterprise in two important ways. First, the Telephone Company, as a public utility, is required by law to supply service to all who seek it. Second, the Telephone Company must afford its subscribers virtually unlimited credit once their telephones are installed. No other utility is in quite the same vulnerable position in the latter regard. With gas or power companies, for example, the amount of service which can be provided to a subscriber within a billing period of one month is relatively finite. In the case of telephone service, with the availability of making long-distance calls, the

potential loss of revenue to the Telephone Company through non-payment of bills is enormous.

13. The need for protection against nonpayment is evidenced by the amount of uncollectible debt experienced by the Telephone Company. During 1974, it rose to \$21,273,463. Uncollectible revenues must eventually be passed on to all subscribers in the form of higher telephone rates.

Application of the Deposit Tariff

14. Because of the high cost of maintaining deposit accounts, the Telephone Company has attempted to ask for fewer and fewer deposits. The current policy of the Company is to refrain from requesting a deposit unless the customer cannot establish credit in any other way.

15. Additionally, although the tariff allows the Telephone Company to return business deposits after four years if a subscriber's account has not been delinquent, the Telephone Company returns the deposit within a shorter time in accounts which have not been delinquent.

16. The Telephone Company is entitled to request a deposit equivalent to two months' estimated charges if a subscriber cannot otherwise establish credit. Once a subscriber has

established credit without a deposit, the Telephone Company will not ask him to post a deposit unless he becomes delinquent in making payments.

17. When an application for commercial or business telephone service is received by a service representative, the applicant's prior telephone service, if any, is checked and collection experience is obtained and evaluated. If the applicant has had prior telephone service with any telephone company and collection experience has been satisfactory, no further information will generally be sought and a deposit will not be necessary.

18. If the applicant has not had prior telephone service, he will be asked whether he owns or rents his premises, his place and type of employment, whether he has bank accounts and, if this information is insufficient, he will be asked to supply any additional information which would help the Telephone Company to evaluate his credit status.

The Amount of the Deposit

19. If a determination is made that a deposit is required, the amount of the deposit is arrived at on the basis of uniform rules. The amount of the deposit does not depend on a subscriber's employment or economic status. If a subscriber has had prior telephone service and a deposit is required, the

Telephone Company will ask for a deposit equivalent to the subscriber's average bill for two months' service.

20. In sum, the deposit tariff is applied equally and in a nondiscriminatory manner in accordance with established and uniform practices. Deposits are essential to control the amount of uncollectible debt.

Sworn to before me this

day of February, 1975.

s/ Peter G. O'Hare Jr.
Peter G. O'Hare, Jr.

September 12, 1974

Mr. R. Lee
Taft Hotel
777 Seventh Avenue
New York, New York 10019

Dear Mr. Lee:

As per our conversation this morning you agreed to pay a \$30,000.00 deposit for the Ho-Taft Management Corporation in three installments as follows:

\$10,000.00 by 9/15/74

10,000.00 by 10/11/74

10,000.00 by 11/11/74

10/28
11/25

Concurrently, you agreed to pay the bill within five (5) days of receipt. Your bill date is the sixteenth, you should receive the bill by the twenty-fourth so the bill should be paid no later than the twenty-eight of each month.

These arrangements are in lieu of a deposit of \$56,000.00. Any deviation from our agreed payment arrangements would cause renegotiation of the full \$56,000.00 deposit.

If the deposit payments or the bill payments are not made by the dates agreed upon your outgoing service may be interrupted. Your incoming service will be terminated five days later. An there's a charge for restoring disconnected service.

Exhibit A

I hope none of this action is necessary. I welcome you as a new customer and sincerely wish you well with your new enterprise. If I can be of any assistance please don't hesitate to call me.

Yours truly,

S. P. Klein
Manager

SPA:bp

About Real Estate

PEOPLE WITH A 'PLAN' BUY HOTEL

New York Times
Oct 11, 1974
By Alan S. Oser.

The Hotel Taft, one of the better known tourist meccas of the Times Square area, has changed hands.

In fact, it has changed hands twice since September, the first time to a company headed by a man who has had only two previous money-losing flings in the hotel business, and the second time to a lawyer who has never been in the business at all.

The story of how veritable novices came to own the 1,432 room Taft tells something about the plight of the city's prewar transient hotels at a time of sharply rising costs and lagging tourism.

Income-producing properties that are operating in the red, with experienced owners losing either the desire or the capability to carry on, become the target of people with a "plan".

Sometimes, of late, the people are community groups hoping for some form of public subsidy to renovate and operate solid, large and perfectly habitable - if money-losing - structures. In the Taft case, it is private businessmen.

First there was Gilbert M. Federbush, 41 years old, who formed a nonprofit company called The Urban Renewal Housing and Development Corporation, chartered in New York State, in 1972. He acquired title to the Taft, with no cash investment, early last month. Later he transferred title to another entity, the Hotaft Corporation, formed by a 44 year old lawyer-acquaintance, Robert S. Lee.

Since he left Columbia University in the nineteen-fifties, Mr. Federbush has worked in production for the National Theater in Washington, done a film, worked for a credit card company and had a recording company that sold films to the armed services.

Now he has another idea - to promote low-income housing in the financially ailing older hotels of the city, and he is pursuing it from a three-bedroom suite on the 14th floor of the Taft.

In two interviews, Mr. Federbush would not say from where or whom the money for his operation is coming, or how he is now pursuing it. But he did concede

that two hotel ventures so far have ended in failure. The only other real estate he owns, he said, is "some buildings in the East Village."

Last May his company acquired title to the Hotel Woodstock on 43rd Street between Sixth and Seventh Avenues. The owners were Affiliated Hotels, a group that also owns the Wentworth and the Mansfield, among other smaller hotels. The managing partner, Steve Silberberg, said that losses were running at \$18,000 a month, and the Federbush group was given title - for no cash - in the hope that it could build up tenancy and operate at lower cost.

Soon new furniture and television sets started to arrive. Soon, too, mortgage and real-estate tax payments ceased ("If we had continued paying the mortgage, we could not make repairs," Mr. Federbush said.)

But a mortgagee whose loan was coming due could not be persuaded to ease the terms of the loan. The mortgagee started foreclosure proceedings, and now runs the hotel as a receiver. Bills are arriving from suppliers still.

In another brush with a hotel, Mr. Federbush said he had had a "conditional agreement" to buy the Hotel Paris at West End Avenue and 97th Street. Representatives of a British group that owned the property, which was losing heavily, were receptive to his plans.

"We thought we had a deal," he said, and he pumped in "thousands of dollars." But the mortgage holder never would agree to the conditions, and title never passed. The hotel is in receivership.

At the Taft, occupancy had reportedly dropped below 50 per cent during the summer, and the operating deficit was reportedly running at about \$80,000 a month. Hotels need an occupancy of perhaps 55 to 70 per cent, depending on their financial structure, to break even.

The owner, one of Lawrence A. Wien's real-estate companies, was ready to sell. Mr. Wien himself, it was reported, appeared at the closing but did not take part in the negotiations. But a lawyer in the office noted that the purpose of Mr. Federbush's company was "to acquire buildings and property in urban centers for conversion into low-income housing" and added that Urban Renewal Housing and Development was "good enough for the sellers if it was good enough for the mortgagee." The Wien interests "took no money out of the closing," the spokesman said.

cont....

The mortgagee - the Penn Mutual Life Insurance Company, holders of a loan with an unpaid balance of \$7.5-million - noted that the property itself was security for the loan. Presumably, if the new owners fail, Penn Mutual will foreclose, wiping out the Wien layer of financing. But low-income housing is apparently not the plan for the Taft, at least for the present.

Mr. Lee, the new owner, said he had been "lucky" so far in his effort to run the Taft as a commercial hotel. He thinks that the "economic hedge" is working in his favor, because occupancy has risen to an average of 54 per cent. Breakeven would be 56 to 58 per cent, he said.

"People with financial troubles are trying to cut expenses," he said. "They are going to less expensive hotels." Rates at the Taft are \$16.00 for a single and \$21 for a double. A vigorous mail campaign to attract visitors has been undertaken.

People with a financial interest or a social stake in the future of the Times Square area - all New Yorkers, in a sense - will wish him success. In real estate, blight is always the possible price of investment failure.

Subject: Ho Taft Corporation

CUSTOMER SERVICES - BUSINESS OFFICE
WESTERN DIVISION

December 26, 1974

Mr. E. C. Small
Division Manager, Revenues

As you suggested, I have personally reviewed the facts surrounding the request by West 50th Street for an additional deposit from the Hotel Taft. This request which would increase the security held on the Hotel Taft account to \$56,000 is, in my mind, absolutely essential at this time.

Several factors influenced my decision to sustain this deposit:

1. Ho Taft is a new corporation formed solely to manage the Hotel Taft. Credit information and evidence of management experience is limited.
2. We have been unable to obtain adequate credit information on Mr. R. S. Lee who is the sole shareowner of the Ho Taft Corporation.
3. The New York Department of State - Division of Corporations does not have a record of the papers incorporating this firm.
4. The Hotel Industry per se is in a depressed state as evidenced by several recent bankruptcies, and all hotels are subject to serious losses due to a low occupancy rate. The New York Times' article dated October 11, 1974 specifically indicated that the Hotel Taft has experienced losses of approximately \$80,000 per month.
5. The original purchaser of the Taft, Mr. G. Federbush, who is mentioned in the Times' article has been connected with two previous hotel failures. He supposedly turned the Hotel Taft over to Mr. R. S. Lee and is no longer associated with the corporation. However, during his recent negotiation for the purchase of the Carriage House Hotel in Miami, Florida he claimed ownership of the Hotel Taft.

Each of these items contribute a certain amount of doubt on the ability of the Hotel to continue operations successfully. This doubt, of course, requires that we adequately secure the \$30,000 of credit that we extend to this Hotel monthly. I fully expect that you will concur with our position.

Division Manager

November 7, 1974

10:40 A.M.

SUBJECT: Deposit dispute of HOTAFT,
247-4000, 777 Seventh Avenue
Manhattan

ATTENDING: Mr. C. Kraft - PSC
Mr. R. Lee - President - HOTAFT
Mr. S. Akin - Business Office Manager
Mr. W. Swinney - NYT Revenues

Mr. Kraft stated that he would review NYT data with the PSC financial group prior to making this determination.

Mr. Lee opened meeting with statement that Sales Dept. had broken three appointments with him. He is negotiating with RCA and Stromberg Carlson for interconnect. PSC expressed concern on broken appointments. NYT apologized and would look into the matter immediately after the meeting. Mr. Lee also presented a graph showing a gap between his collections from guests for toll calls and what he was billed by NYT. NYT & PSC stated this matter was being reviewed by the PSC brought before the PSC by the previous owner at an informal hearing on August 26th.

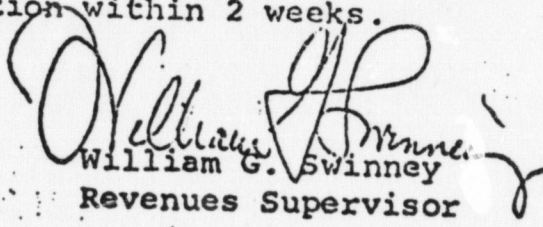
Mr. Lee stated that he would pay his September October and November bills on time but would be slower with December January and February bills. NYT submitted original letter requesting deposit of \$30,000 contingent upon payment of bills within 5 days of receipt. This arrangement was made in order to help a new subscriber get started. Since the agreement the September bill was paid beyond the 5 day arrangement and a disturbing article appeared in the NY Times. (Attached) Mr. Lee stated 75% of the article was inaccurate. Subscriber also asked for an extension of the payment arrangements of the \$30,000 deposit. Mr. Lee brought the HOTAFT property from Urban Renewal. A Mr. Federbush was involved in this transaction. Mr. Kraft noted that the group was previously before the PSC with a case involving the Hotel Paris. NYT noted that meeting involved a lot of "smoke".

Mr. Kraft asked that Mr. Lee rebut the NY Times article in writing. Mr. Lee will mail to PSC November 8th.

NYT noted that the burden of justifying a proper deposit of \$56,000 should not be on NYT but upon Mr. Lee who has no experience in the hotel field and no established credit anywhere. NYT considers Mr. Lee and HOTART a definite risk and if the account went final the PSC should be critical of NYT for not having had an adequate deposit due to adverse rate affect on all other subscribers. NYT stated it would ask a \$100 deposit of a new and unknown "mom & pop" deli and is asking \$56,000 for a new and unknown hotel venture.

NYT stated it felt that the PSC should not get involved in a dollar determination regarding a deposit. Either a deposit is warranted or not and the tariff covers the approximate amount leaving no room for arithmetic dickering. Mr. Lee felt that the PSC should be able to set a precise dollar amount somewhere between zero and \$56,000. Mr. Kraft was non-committal.

NYT will not suspend while the matter is before the PSC. PSC will issue a determination within 2 weeks.


William G. Swinney
Revenues Supervisor

November 27, 1974

Mr. S. Robert Lee,
President
Hofstet Management Corporation
777 7th Avenue
New York, N. Y. 10019

Dear Mr. Lee:

This is to advise you of the determination reached as a result of the informal hearing held in this office of the Public Service Commission on November 7, 1974.

This hearing was held pursuant to your complaint against New York Telephone Company regarding their request for a \$56,000. deposit on telephone service for the Hotel Taft. Prior to your complaint to the Commission, the Company and yourself had agreed to a \$30,000 deposit on this account and prompt payments of your bills subsequent to their receipt. This agreement was confirmed by Mr. Akin, Business Office Manager, in his letter to you of September 22, 1974.

Subsequent to an article appearing in the New York Times of October 11, 1974 regarding certain financial problems being experienced by the Hotel Taft, Mr. Akin advised you in his letter of October 22, 1974 that the previous agreement was no longer in effect, and he was requesting a \$56,000. deposit on this account based upon an average of two months billing to the Hotel. This request for additional deposit was based primarily upon the material appearing in the New York Times article, as well as the Company's contentions that the Hotel was under new and untried ownership, there is no previous credit history on the Hotel's new management, and the Hofstet is a new corporation.

As agreed at the informal hearing, you submitted a letter dated November 8, 1974 taking exception to certain statements in the New York Times article such as the monthly loss of \$60,000, and the average occupancy being below the break-even point.

EXHIBIT E

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The telephone company's Tariff as well as the Public Service Law allows the company to request a deposit equal to two month's average billing. Since Hotel is a new corporation and there is no previous credit history, a deposit of \$55,000 corresponding to the most recent two months average billing is considered appropriate.

If I can provide any additional information, please do not hesitate to contact me.

Very truly yours,

CHARLES KRAFT
Associate Telephone Engineer

cc: H. E. McMahon
V. Merrill



New York Telephone

10 Columbus Circle
New York, N. Y. 10019
Phone (212) 399-2579

Mr. P. G. O'HARE, Jr.
Manager

February 7, 1975

Mr. S. Robert Lee
President
Hotaft Management Corporation
777 Seventh Avenue
New York, N.Y. 10019

Dear Sir:

Please be advised that your incoming service on 247-4000 will be interrupted on Friday, February 14th, if an additional deposit of \$26,000.00 is not paid. This will be in accordance with the recent PSC determination.

If you have any questions, please call me on 399-2519.

Yours truly,

P. G. O'Hare, Jr.
P. G. O'HARE, JR.
Manager

PGO:bs

EXHIBIT F

GENERAL RULES AND REGULATIONS

G. MINIMUM CHARGES (Cont'd)

6. Charges Based on Period of Actual Service

- a. Charges are based on period of actual service when service for which the minimum charge is one month is terminated within the first month, under the following conditions:
 - (1) Condemnation of property, damage to property by fire or similar cause necessitating abandonment of the premises.
 - (2) Death of the subscriber.
- b. Charges are based on period of actual service when service for which the minimum charge is one month is assumed by a new subscriber during the first month except for facilities not taken over, to which minimum charges are applicable in accordance with the terms under which the original service was furnished.

H. PAYMENTS AND TERMINATION OF SERVICE

1. Advance Payments and Deposits

Any applicant for facilities or service, whose financial responsibility is not established to the satisfaction of the Telephone Company, may be required to pay in advance the service connection and installation charges and at least one month's rental.

Applicants for service under annual schedules may be required to make an advance payment equal to the full annual rate.

Applicants for facilities or service to which construction charges are applicable may be required to prepay the monthly payments for such construction charges, the amount of such prepayment to be computed as provided in E. of Section 14.

Any applicant or subscriber, whose financial responsibility is not established to the satisfaction of the Telephone Company, may also be required to deposit a sum up to an amount equal to the total of the estimated charges for two months for the facilities and service, except as provided in Paragraph H.1.a. following for deposits in connection with Election Service. Such applicant or subscriber who requests or is furnished facilities and service for which a minimum charge of more than one month is specified in this Tariff, may, in addition, be required to deposit a sum up to an amount equal to the total of the minimum charge less any installation charge paid by the subscriber. Such applicant or subscriber who requests or is furnished a manual multiple or dial PBX switchboard system or concentrator-identifier equipment may, in addition, be required to deposit a sum up to an amount equal to the total estimated installing and removal costs for the equipment installed less any installation charge paid by the subscriber. The fact that a deposit has been made shall in no way relieve the applicant or subscriber from complying with the Tariff regulations for advance payments and for the prompt payment of bills on presentation. Each applicant or subscriber from whom a deposit is collected shall be given a certificate of deposit and a circular containing the terms and conditions applicable to deposits, in accordance with Part 600 of the Rules and Regulations of the Public Service Commission pertaining to subscriber deposits.

A deposit secured from an applicant for residence service shall be reviewed by the Company after the first three monthly bills have been rendered. If a deposit held is \$10 higher or 20% higher (whichever is greater) than the sum of the bills for service during the second and third months, the difference between such sum and the amount of the deposit shall be returned.

Issued in compliance with Order of Public Service Commission, State of New York, issued February 6, 1974 in Case 26243.

Issued April 5, 1974.

Effective June 5, 1974.

By Edward L. Friedman, General Attorney,
1095 Avenue of the Americas, New York, N. Y. 10036

(N)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

x

HOTAFT MANAGEMENT CORPORATION

Plaintiff

vs.

75 CIV 813

JUDGE RICHARD L. CARTER

AMERICAN TELEPHONE & TELEGRAPH CO., INC.,

AND NEW YORK TELEPHONE & TELEGRAPH CO., INC.,

Defendants

x

STATE OF NEW YORK)

S.S.

COUNTY OF NEW YORK)

Joseph R. McCoy III, an attorney duly admitted to practice law in the State of New York under the penalties imposed for perjury alleges as follows:

I am an attorney associated with Mr. S. Robert Lee, the attorney for the Plaintiff in this matter, and I am therefore fully familiar with all the facts and circumstances heretofore had herein.

Submitting this information in reply to an affidavit made by Peter O'Hare, which was heretofore submitted to this court. The instant affirmation is based upon the information given to me by the attorney of record for the Plaintiff, the person who is intimately involved and

is presently in California.

It is necessary for the Plaintiff to submit this reply because of the many inaccuracies contained in the affidavit submitted by Mr. O'Hare.

Mr. O'Hare has only recently taken on the position as a Business Office Manager for the Telephone Company and has not, at any time, been involved with any of the matters which are the subject matter of this litigation; all prior negotiations and agreements between the parties which formed the basis of this litigation were had with a Mr. Akin, the Office Manager for the Telephone Company at that time. Accordingly, at the very best, Mr. O'Hare is submitting a sworn affidavit claiming knowledge of the situation solely based upon hearsay statements made to him by others. Hopefully, this would be the reason for the inaccuracies contained in his affidavit.

Firstly, Mr. O'Hare states that the prior Management of the Hotel Taft is indebted to the Telephone Company for \$18,000.; this is totally incorrect. The prior Management presently has a dispute with the Telephone Company which may or may not represent an amount owing to the Telephone Company; this amount has been in dispute for a considerable period of time and it is enlightening to note that the Telephone Company

has in fact allowed the situation to drag on partially because of the untenability of their claim. To date the Telephone Company has not proved that any money is owed to it by anybody connected with the Plaintiff.

The above mentioned situation, I am informed, arose approximately several years after bills were paid by the previous management, and the Telephone Company then advised the prior management of this hotel that a mistake had been made in the prior billings and attempted to charge the prior management the additional sum of \$18,000. without substantiating their claim for that sum. For obvious reasons the previous management refused to pay this \$18,000. In addition, at the time the Plaintiff in this action purchased the hotel, the Telephone Company rendered its final and complete bill for its telephone services to the sellers of the Hotel Taft and that bill was paid in full. Therefore, any statement contained in any affidavit submitted by any person alluding to the fact that the sum of \$18,000. was owed and due to the Telephone Company from either this Management or the prior Management is totally false.

The Telephone Company further attempting to persuade this court as to the malicious motive on the part of the Plaintiff makes the totally untrue statement indicating that no certificate of incorporation existed

as of December 6, 1974. This is a total and absolute lie and in proof of such lie I am attaching hereto a xerox copy of the receipt from the Secretary of State showing the date of the incorporation of the Plaintiff as of September 10, 1974.

As to the article in the New York Times mentioned in Mr. O'Hare's affidavit, neither the Telephone Company nor the Plaintiff controls the New York Times or its reporters. Further to the best of my knowledge an article appearing in a newspaper has never been admitted in any court of law as to the truth or falsity of the facts contained in the article; it is further not my opinion that reliance on a newspaper article has ever been considered as part of a reasonable credit check made in the normal course of business by any reputable firm. However, in this case it appears that the Telephone Company has based their entire argument on said article. This may also indicate why the Telephone Company may have problems in operating its business profitably. Furthermore, the reporter did not indicate the source of his information nor did he indicate that such information was accurate. As a matter of fact, the information in the New York Times was absolutely not accurate.

In any event it is obvious that a newspaper article could never

form the basis whereby a party could with absolute impunity breach a written agreement with any party without first conducting at least a cursory investigation to delve into the actual truth of the allegations contained in the article. This was never done by the Telephone Company and to this date an investigation has never been made by the Telephone Company.

The Defendants have never requested any credit information from the Hotel Taft. They should certainly not complain at this time that they did not have credit information. It is indeed tragic that one of the largest public utilities in the country and the world would base its entire credit process not upon any credit check which is readily available through various "credit banks" but rather upon short unconfirmed newspaper articles.

Such credit information was not requested even though the President of the Plaintiff did in fact during the last hearing before this court give credit information to Mr. O'Hare who apparently was not interested in this credit information. Credit information by the Plaintiff was given to Consolidated Edison whose bills run considerably higher than the Telephone Company bills and which Consolidated Edison is also a public utility just the same as the Telephone Company and yet Consolidated Edison neither requested nor received any security deposit.

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The Defendants could easily have verified with the Plaintiff's bank the average balances maintained in the said bank, said average sums are very substantial, normally in the six figure range. It is obvious that this so-called "Credit Information Gap" is merely a device used by the Telephone Company to extort substantial deposits from its customers, in violation of its own rules and regulations and in violation and flagrant disregard of the Federal Communications Commission rules and regulations concerning said deposits for the sole purpose of obtaining monies into the Telephone Company treasury, thereby avoiding the necessity of making a public offering of its stocks and bonds or engage any bank borrowing as every other major American Corporation is required to do, to increase its assets.

There has never been a formal hearing. There was, however, an informal conference held in New York City under the auspices of the Public Service Commission during which no minutes were taken by anyone nor was any documentary evidence or opinion briefs submitted by any of the parties and appeared to be solely an attempt by the Telephone Company to compromise the disputed matter. The result of the informal conference was nothing more than a settlement discussion before a member of the New York State Public Service Commission which, in any event, had no jurisdiction over the dispute due to the interstate nature of the service rendered to the Plaintiff by the Defendant.

With some reluctance I must here state that it appeared from the manner in which the conference was held and the subsequent correspondence received therefrom that the member of the Public Service Commission was merely attempting to settle an embarrassing situation in favor of a New York State Public utility and thereby obtaining for said public utility the benefits of a security deposit to which they were not entitled.

The argument propounded by the Telephone Company both in the affidavit and before the court that the necessity for the Telephone Company in obtaining substantial deposits as occasioned by certain losses of revenue is absolutely preposterous. The absurdity of this argument can be noted from the fact that the Defendants have gross annual business in the area of approximately Eighteen Billion Dollars and its losses in revenue is in the sum of Twenty One Million Dollars. That collection record appears to be even better than the Internal Revenue Service who does not and has never claimed to be capable of obtaining a 100% collection of outstanding debts.

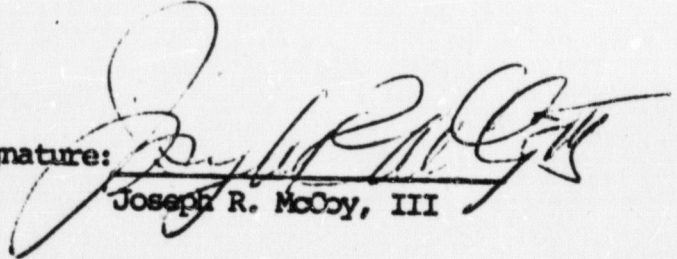
The fact that the Telephone Company may not be able to compel the reputable Plaintiff to submit to the extortionary demands of the Telephone Company by making the demanded security deposit will in no

event have any effect upon any other of the Telephone Company "Clients" who may in fact be in financial difficulty and therefore obligated to comply with the maximum security tariff to be imposed.

I respectfully submit to the court that the affidavit of Mr. [redacted] are must be looked upon as solely self serving; written by a person who has no personal knowledge of the facts of this case, is presently occupying a position in the Telephone Company where his continued employment and further promotion capabilities may in fact be clearly weighted by his actions in this matter, and therefore said affidavit must be looked upon by this court with a "jaundiced eye". In closing I would further like to reiterate that this affidavit is submitted by myself and not Mr. Lee, solely because of the unavailability of Mr. Lee who is, as presently stated, in the State of California.

WHEREFORE, I respectfully request that this court grant the Plaintiff's motion in all respects.

Dated: March 3, 1975

Signature: 

Joseph R. McCoy, III

FILING RECEIPT

TYPE OF CERTIFICATE
Incorporation (Business)

S

CORPORATION NAME

HOTAFT MANAGEMENT CORPORATION

DATE FILED

9/10/74

DURATION & CO. CODE

P 31

FILM NO.

A 180585

NO. AND KIND OF SHARES

200 npv

LOCATION OF PRIN. OFFICE

NYC NY CO

COMMENT

ADDRESS FOR SERVICE OF PROCESS

777 SEVENTH AVE NY NY

REGISTERED AGENT, IF ANY

FILER AND ADDRESS

S ROBERT LEE
17 WEST 68th ST
NEW YORK NY 10023

6 DOLLAR FEE TO COUNTY

FEE AND/OR TAX PAID AS FOLLOWS:

☒ CHK. ☐ M.O. ☐ CASH

\$ 60

\$ 50
\$ 10

FILING
TAX

CERTIFIED COPY
CERTIFICATE

TOTAL \$
REFUND OF \$

60

TO FOLLOW

JOHN J. GHEZZI
ACTING SECRETARY OF STATE

R 662-518

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

HOTAFT MANAGEMENT CORPORATION,

:

Plaintiff,

:

- against -

:

75 Civ. 812

AMERICAN TELEPHONE AND TELEGRAPH
COMPANY, and NEW YORK TELEPHONE
COMPANY,

:

:

Defendants.

:

- - - - - x

A P P E A R A N C E S:

S. Robert Lee, Esq.
17 West 68th Street
New York, New York 10023
by: Joseph R. McCoy III, Esq.
Attorneys for Plaintiff

George E. Ashley, Esq.
New York Telephone Company
1095 Avenue of the Americas
New York, New York 10026
by: Walter Reid, Esq.
Attorneys for Defendants

CARTER, District Judge

O P I N I O N

This is an action for injunctive relief and damages. The commerce clause and the Federal Communications Act, 47 U.S.C. §406, are relied upon as the bases for jurisdiction of this court. The claim is dubious, and moreover seems clearly barred under 28 U.S.C. §1342 since an appropriate remedy appears to exist in the state courts, see, e.g., Matter of Foy v. Schecter, 1 N.Y. 2d 604, 154 N.Y.S. 2d 927 (1956); New York Telephone Co. v. Public Service Comm., 36 A.D. 2d 261, 320 N.Y.S. 2d 280 (3d Dept.), modified, 29 N.Y. 2d 164, 324 N.Y.S. 2d 53 (1971).

Even assuming jurisdiction exists, however, the case must be dismissed. Plaintiff, as far as I can understand the facts, is the new and most recent owner of the Hotel Taft, one of New York's larger hotels. When plaintiff took over ownership last September, defendant requested credit information from plaintiff. Defendant alleges that it received no information and defendant then requested of plaintiff a \$56,000 advance deposit which, based upon prior service to the hotel, defendant estimated to be the equivalent of two months' charges. At that time, the old management owed the company \$18,000 for telephone service and usage. Plaintiff protested the

demand, asserted it had no financial relationship to the prior owner, and agreed to deposit \$30,000 in three monthly installments. Plaintiff has only made a \$20,000 advance deposit.

On or about October 11, 1974, THE NEW YORK TIMES published an article which stated that the hotel had changed hands twice since September; first to a company headed by a man associated with two prior money-losing hotel operations; and then to the present owner, who is without hotel experience. It was indicated that the hotel was losing \$80,000 a month.

Spurred by this article, the company concluded that the advance deposit should be increased to \$56,000. The increase was also demanded for the further reason that the company had no credit rating on Mr. Lee, the sole proprietor, and no record of plaintiff's registration with the New York State Division of Corporations.

Plaintiff in an affidavit filed with its brief asserts that no credit information was ever requested and controverts other details which defendant has asserted as facts. However, there is no dispute that plaintiff has made a \$20,000 advance deposit and that defendant is demanding \$56,000.

When advised of defendant's decision to

*There was clearly
a question to
be decided*

request a \$56,000 advance deposit, Mr. Lee protested, and on November 7, 1974, Mr. Lee and representatives of defendant met with a Charles Kraft, Associate Telephone Engineer of the New York State Public Service Commission. On November 27, 1974, Mr. Lee was informed that the commission had determined that the telephone company's request was reasonable. Plaintiff requested a formal hearing before the commission which, according to the plaintiff (Transcript p.6), was denied and the decision of Mr. Kraft was affirmed.

On February 7, plaintiff was advised by defendant that "in accordance with the recent PSC determination" incoming service on Hotel Taft phones would be interrupted unless on Friday, February 14, an additional deposit of \$26,000 was paid. Defendant advises that the amount due is in fact \$36,000, since the February 7th letter had been written under the mistaken belief that plaintiff had already deposited \$30,000, instead of \$20,000.

The motion for preliminary injunction was heard on February 21. A temporary restraining order was entered and plaintiff was required to post a \$20,000 bond or deposit cash in that sum. The motion is denied.

No irreparable injury has been shown and hence the motion must be denied. See Gulf & Western Industries, Inc. v. Great Atlantic & Pacific Tea Co., Inc., 476 F. 2d 687 (2d Cir. 1973). Plaintiff is not being denied service. It is being required to make an advance deposit of an estimated two months' service charge. This requirement is authorized under PSC General Rules and Regulations, and plaintiff's complaint concerning defendant's right to require it to make the advance deposit in dispute was heard and approved by the PSC, the agency authorized and equipped to deal with such problems.

The action is otherwise dismissed since no federal questions are raised. The issue here does not concern the rates defendant charges for interstate calls, cf. Ivy Broadcasting Co. v. AT&T, 391 F. 2d 486 (2d Cir. 1968), but whether the large advance deposit which defendant demands is an appropriate condition which it may require in respect of providing plaintiff with telephone service. That is a local matter within the jurisdiction of the PSC.

SO ORDERED.

Dated: New York, New York
March 5, 1975

ROBERT L. CARTER
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HOTAFT MANAGEMENT CORPORATION,

Plaintiff,

-against-

AMERICAN TELEPHONE AND TELEGRAPH
COMPANY, and NEW YORK TELEPHONE
COMPANY,

Defendants.

75 Civ. 812

Judge Robert L. Carter

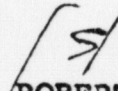
NOTICE OF APPEAL TO
THE UNITED STATES
COURT OF APPEALS FOR
THE SECOND CIRCUIT

Notice is hereby given that HOTAFT MANAGEMENT CORPORATION, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the order of Judge Robert L. Carter, United States District Court Judge of the United States District Court, Southern District of New York, entered in this action on March 5, 1975.

Dated: New York, New York
March 7, 1975

TO:

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New York, New York 10026
Attention: Walter Reid, Esq.
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